

JPA File: JPA 90-099
AG Contract No.: KR90-1710TRD
AMENDMENT NO. ONE
Project: US 60-Landscape Maintenance
Section: Val Vista -- Power Roads
TRACS No.: MAINTAGR
Budget Source Item No.: N/A

**AMENDMENT NO. ONE
TO
INTERGOVERNMENTAL AGREEMENT
LANDSCAPE MAINTENANCE**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into this date August 30th, 2006, Amendment No. One to JPA No. 90-099, A.G. Contract No.: KR90-1710TRN, filed with the Secretary of State under No. 15295, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

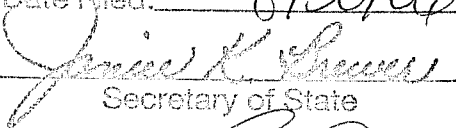
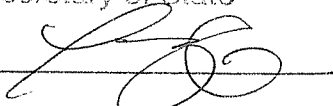
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned the authority to execute this Agreement on behalf of the City.

Incident to the State's ongoing improvements to widen US 60 between Val Vista Drive and Power Road, it is necessary to amend this Agreement to include the design and installation of a new freeway irrigation system and new water services. The Project Plans Maintenance Exhibit is deleted and replaced with the updated Landscape Maintenance Exhibit, attached hereto and made a part hereof. This Agreement details maintenance areas for both parties, to be executed prior to completion of the State's improvements. The purpose of this Amendment is to outline the changed conditions, noting there is no money exchanging between the parties.

THEREFORE, in consideration of the mutual agreements expressed herein, this Agreement is amended as follows:

NO. 15295
Filed with the Secretary of State
Date Filed: 8/30/06

Secretary of State
By: 

II. SCOPE OF WORK

Article II, Paragraphs 2, 3, 9, 10 and 11 are deleted and replace in full as follows:

2. The State will be responsible for the design and installation of a new freeway irrigation system and landscaping per the project plans. Water services will be installed at the following additional locations:

Val Vista Drive	NE quadrant	Greenfield Road	NW quadrant
Val Vista Drive	SE quadrant	Higley Road	NE quadrant
Greenfield Road	SW quadrant	Superstition Springs Boulevard	SW quadrant
Superstition Springs Boulevard	NW quadrant	Power Road	SE quadrant
Power Road	NE quadrant		

3. The State and the City shall jointly inspect the landscape and irrigation construction modifications. The State shall be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the State. The City shall be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City.

9. At the conclusion of the contractor's maintenance and warranty period referred to in the construction contract as the Landscape Establishment Phase, the State shall, assume responsibility for maintenance of irrigation system as designated for the State, on the attached Landscape Maintenance Exhibit, including all testing, adjusting, repairing and operation of the irrigation system. Be responsible for electrical power for State's irrigation system.

10. At the conclusion of the contractor maintenance and warranty period referred to in the construction contract as the Landscape Establishment Phase, the City shall, assume responsibility for maintenance of irrigation system as designated for the City, on the attached Landscape Maintenance Exhibit, including all testing, adjusting, repairing and operation of the irrigation system. Be responsible for electrical power for the City's irrigation system.

11. The State and the City hereby agree to maintain the landscaping and irrigation system for the areas according to the designations as modified in the Landscape Maintenance Exhibit A. Maintenance shall include the care of all landscaping in accordance with accepted horticultural practices. Maintenance shall also include but not be limited to keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, testing, adjusting, repairing and operation of the irrigations system and the repair of all erosion to maintain the final grade establishment at the completion of the State's construction. Any changes, additions or deletions to the landscaping or irrigation as modified, must have written approval by the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic controls on US 60, will meet the requirements of the "Manual for Uniformed Traffic Control Devices" (MUTCD).

Article II, Paragraphs 12 and 13 are added in full as follows:

12. The State shall, grant or confirm, per established procedures of the State's Phoenix District Permit Office, that the City has a valid annual *citywide* Encroachment Permit on file, for routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit through the State's Phoenix District Permit Supervisor, as per the Phoenix District's established procedures.

13. The City shall obtain, per established procedures of the State's Phoenix District Permit Office, a valid annual citywide Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Phoenix District's established procedures, of which may be obtained through the District Office referenced herein.

III. MISCELLANEOUS PROVISIONS

Article III, Paragraphs 7 and 8 are deleted and replace in full as follows:

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007 FAX (602) 712-7424

City of Mesa
City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

For Permit -- Contact:
Arizona Department of Transportation
Phoenix District Permits Office
2140 W. Hilton Avenue, Mail Drop PM01
Phoenix, AZ 85009

8. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the agreement is in proper form.

Article III, Paragraphs 9 and 10 are added as follows:

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and the City at the end of the period for which the funds are available. No liability shall accrue to the State and the City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

EXCEPT AS AMENDED herein, **ALL OTHER** terms and conditions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amended Agreement the day and year first above written.

CITY OF MESA

By: Christopher J. Brady
CHRISTOPHER J. BRADY
City Manager

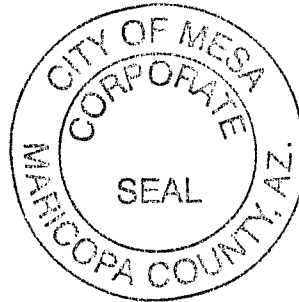
STATE OF ARIZONA

Department of Transportation

By: Daniel S. Lance
DANIEL S. LANCE, P.E.
Deputy State Engineer, Valley Transportation

ATTEST:

By: Barbara Jones
BARBARA JONES
City Clerk



US60-Lndscp Mntnc/Val Vista to Power Roads
Revised Draft #2 11-July-2006 lg/ks/ghc
w/consideration to Mesa's comments dated 16 February 2006 and 6 July 2006

JPA 90-099 Amendment One

ATTORNEY APPROVAL FORM FOR THE CITY OF MESA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City of Mesa, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

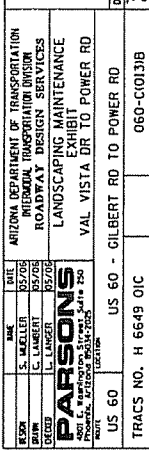
DATED this 17th day of August, 2006.

A handwritten signature in cursive script, appearing to read "Debbie Spivack", written over a horizontal line.

City Attorney

FWSA REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
9	ORE.	060-C01318	3	4	

060 MA 182



Drawing 2

[illegible][illegible]

4801 E. Kensington Street, Suite 250 Phoenix, Arizona 85034-2025		VAL VISTA DR TO POWER RD	
ROUTE	LOCATION		
US 60	US 60 - GILBERT RD TO POWER RD		
TRACS NO. H 6649 01C		080-C(0131B)	
		DTG NO.	2A
		4 OF 4	

M. Ambraszynk

Drawing 2 A

RESOLUTION NO. 8781

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN EXISTING INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE LANDSCAPE MAINTENANCE ALONG THE SUPERSTITION FREEWAY (US 60) FROM VAL VISTA DRIVE TO POWER ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That amendment number one to an existing Intergovernmental Agreement between the Arizona Department of Transportation and the City of Mesa for the landscape maintenance along the Superstition Freeway (US 60) from Val Vista Drive to Power Road (ADOT JPA No. 90-099); is hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 14th day of August, 2006.




ATTEST:

[Signature]
City Clerk

APPROVED:

[Signature]
Mayor

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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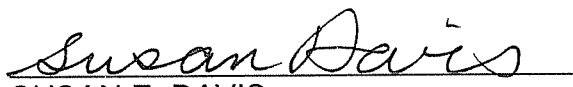
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR90-1710TRN (**JPA 90-099, Amendment No. One**), a Landscape Maintenance Agreement between public agencies, i.e., The State of Arizona and The City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 24, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:975982
Attachment